

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

UNITED STATES OF AMERICA PLAINTIFF

VS. NO. 1:20CR81

BEN SANFORD DEFENDANT

WAIVER OF INDICTMENT, FILING OF INFORMATION,
AND GUILTY PLEA HEARING

BEFORE HONORABLE SHARION AYCOCK
CHIEF UNITED STATES DISTRICT JUDGE

Oxford, Mississippi
January 26, 2021

APPEARANCES:

For the Government: ROBERT J. MIMS, Esquire
U.S. Attorney's Office
900 Jefferson Avenue
Oxford, MS 38655

For the Defendant: JOE M. HOLLomon, Esquire
Joe M. Hollomon & Associates, P.A.
P.O. Box 22683
Jackson, MS 39225-2683

Court Reporter: PHYLLIS K. McLARTY, RMR, FCRR, CCR #1235
Federal Official Court Reporter
911 Jackson Avenue East
Oxford, MS 38655

1 (11:05 A.M.)

2 THE COURT: Okay. You may call the case.

3 COURTROOM DEPUTY: The Court calls Case Number
4 1:20CR81, United States of America versus Ben Sanford. This is
5 a waiver of indictment hearing.

6 THE COURT: Thank you.

7 And so the attorneys representing the parties in this
8 case, Robert Mims represents the government, and Joseph
9 Hollomon represents the defendant, Dr. Ben Sanford. Kimberlee
10 Hatter is our probation officer, and she is appearing by video.
11 The defendant, defendant's attorney, and prosecutor are in the
12 courtroom.

13 Mr. Sanford, I'm going to ask that you do stay seated.
14 We'll know in just a moment if the court reporter can hear you
15 well enough, but do pull it closer to you if need be. And I'm
16 advised that you plan to enter a plea to Count 1 of an
17 information waiving the indictment. Is that your intent this
18 morning?

19 THE DEFENDANT: Yes, it is.

20 THE COURT: Okay. Would you stand and raise your hand
21 to be sworn.

22 (OATH WAS ADMINISTERED BY THE COURTROOM DEPUTY.)

23 THE COURT: Thank you, and you may have a seat.

24 So, Mr. Sanford, do you understand that you are now
25 under oath and any answers that you give to my questions that

1 are false may later be used against you in a charge for
2 perjury?

3 THE DEFENDANT: Yes.

4 THE COURT: And do you understand that you have the
5 right to remain silent and not answer any questions in this
6 proceeding?

7 THE DEFENDANT: Yes.

8 THE COURT: So you have advised the Court that you do
9 wish to enter a plea of guilty by waiving the indictment by way
10 of information to Count 1; is that correct?

11 THE DEFENDANT: Yes.

12 THE COURT: You have also signed a plea agreement, and
13 in a few moments, I'll ask you some questions specific to the
14 plea agreement, but, first, I want to ask you some general
15 questions to make sure that you understand what you are
16 waiving. So, if during the course of this proceeding I ask you
17 anything that you do not understand, do not answer. Instead,
18 ask to pause, speak with your counsel before offering an
19 answer. Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: Would you state your full name for the
22 record, please?

23 THE DEFENDANT: Benjamin Franklin Sanford, Jr.

24 THE COURT: And what is your age?

25 THE DEFENDANT: 69.

1 **THE COURT:** How many years of school did you complete?

2 **THE DEFENDANT:** You're talking about grade school,
3 everything?

4 **THE COURT:** Yes, sir.

5 **THE DEFENDANT:** Twelve years of primary education,
6 four years of college, and three years of medical school.

7 **THE COURT:** And am I correct that you do hold the --
8 the degree of medical doctorate?

9 **THE DEFENDANT:** Correct.

10 **THE COURT:** Do you suffer from any mental illness or
11 psychiatric illnesses?

12 **THE DEFENDANT:** No.

13 **THE COURT:** Are you today under the influence of any
14 drugs or alcohol that might impair your understanding of this
15 proceeding?

16 **THE DEFENDANT:** No.

17 **THE COURT:** So I am certain that Mr. Hollomon, in
18 great detail, has explained to you this procedure and how it
19 differs in that you have not been indicted. Do you understand
20 that?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** And so these initial questions are to
23 determine that you understand that you could not enter your
24 plea here today and, instead, wait until you have an
25 opportunity to see whether or not a grand jury would, indeed,

1 indict you. Understand?

2 THE DEFENDANT: Yes.

3 THE COURT: So this is voluntary on your part coming
4 forward. Understood?

5 THE DEFENDANT: Yes.

6 THE COURT: Well, do you understand that you have not
7 been indicted on this charge?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that you have a
10 constitutional right to wait to see if the grand jury would
11 consider bringing a charge against you?

12 THE DEFENDANT: Yes.

13 THE COURT: And understand that a grand jury would
14 have to determine that there was probable cause to believe that
15 a crime was committed and that you committed this crime?
16 There's no certainty that if this matter was brought to a grand
17 jury that one would return an indictment against you. Do you
18 understand?

19 THE DEFENDANT: Yes.

20 THE COURT: But you're asking this Court to waive the
21 indictment and accept your voluntary plea here today; is that
22 correct?

23 THE DEFENDANT: Yes.

24 THE COURT: So, Mr. Hollomon, do you have the form for
25 waiving the indictment and presenting it here?

1 **MR. HOLLOMON:** Your Honor, I have that form. It's
2 been signed by my client after reviewing it with him. We've
3 provided that to the court clerk.

4 **THE COURT:** Thank you. I acknowledge it, and it may
5 be filed along with the information.

6 So, Mr. Sanford -- Dr. Sanford, has anyone tried to
7 threaten you, coerce you, or promise you anything in exchange
8 for waiving the indictment?

9 **THE DEFENDANT:** No.

10 **THE COURT:** Have you had an adequate opportunity to
11 discuss this procedural move with your attorney?

12 **THE DEFENDANT:** Yes.

13 **THE COURT:** And, Mr. Hollomon, are you satisfied that
14 your client is informed and that he is knowingly, voluntarily,
15 and intelligently signing his waiver of indictment in entering
16 his appearance today?

17 **MR. HOLLOMON:** I am, Your Honor.

18 **THE COURT:** Thank you.

19 In this case, the Court finds that the defendant is
20 fully competent and capable and aware of the nature of his
21 right to require that the government proceed by way of
22 indictment. The Court further finds that the waiver signed by
23 the defendant is knowingly and voluntarily made. The Court
24 accepts the waiver and orders that it be filed along with the
25 information.

1 Dr. Sanford, have you had an opportunity to discuss
2 your intentions of entering a plea fully and completely with
3 your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you satisfied that your attorney is
6 representing your best interest in this case?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you satisfied with the representation
9 that has been afforded you in this case?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that under the
12 constitution and the laws of the United States that you are
13 entitled to a speedy and public trial of this charge?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that if you went to
16 trial you would be presumed innocent, it would be the
17 government's burden to prove you guilty beyond a reasonable
18 doubt?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you further understand that in the
21 course of a trial that the government would, in presenting its
22 case, likely call witnesses and produce documents against you;
23 in turn, your lawyer would have the opportunity to
24 cross-examine government's witnesses? And do you understand
25 that you would have the right to present a defense through

1 witnesses and documents, that it's in this way that a jury
2 determines the -- from the admissible evidence whether or not
3 you are innocent or guilty of this charge? Understand?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** And do you understand that if you went to
6 trial that you would have the right to compel the attendance of
7 witnesses, to subpoena those witnesses, or to compel the
8 production of documents?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** And are you aware that if you went to
11 trial that you would have the opportunity to testify in your
12 own defense?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Do you understand that if you went to
15 trial and elected not to testify in your own defense that I
16 would advise the jury that you have a constitutional right to
17 remain silent?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** So do you understand that if you went to
20 trial and you were found guilty that this Court would sentence
21 you based upon the jury's finding of guilt, but do you
22 understand that today if you enter your plea of guilty that you
23 will not have a right to appeal? You will have -- you can
24 appeal the sentence, but, in other words, this is final today
25 in the sense that if you went to trial you would have the right

1 to appeal the conviction as well as the sentence to the Fifth
2 Circuit?

3 THE DEFENDANT: Yes.

4 THE COURT: So do you understand that today if I
5 accept your plea that I will adjudicate you guilty of Count 1
6 of the information today, I will sentence you at a later date
7 after a presentence report?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that by entering your
10 plea today that you are waiving or giving up your right to a
11 jury trial?

12 THE DEFENDANT: Yes.

13 THE COURT: Now, have you had a discussion with
14 Mr. Hollomon about these constitutional rights that I've
15 inquired about?

16 THE DEFENDANT: Do I have questions? No.

17 THE COURT: Well, I'm asking you, did the two of you
18 discuss the constitutional rights that you would be asked and
19 inquired about waiving today?

20 THE DEFENDANT: Yes, we have discussed it. Yeah.

21 THE COURT: Okay. And you have understood my
22 questions to you today?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you still wish to enter a plea of
25 guilty?

1 **THE DEFENDANT:** Yes.

2 **THE COURT:** So you are charged in Count 1 of the
3 information that, from on or after April 2013 to on or about
4 June 2018, in the Northern District of Mississippi, that as the
5 owner and operator of Starkville Internal Medicine, with the
6 intent to defraud and mislead, that you received in interstate
7 commerce various drugs, including but not limited to foreign
8 versions of P-r-o-l-i-a -- Doctor, you might tell me how to
9 pronounce it --

10 **THE DEFENDANT:** Prolia.

11 **THE COURT:** -- and is it Boniva, B-o-n-i-v-a -- that
12 were misbranded within the meaning of Title 21, United States
13 Code, Section 352(f)(1), and Section 352(c), and Title 21, Code
14 of Federal Regulations, Section 201.15(c)(1), and that the
15 information required to be on the labeling was not in the
16 English language and did deliver and proffer delivery of the
17 misbranded drugs for pay.

18 Do you understand that charge, sir?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** In order to convict you of those -- that
21 crime, the government must prove certain elements of the
22 offense, and I'm going to ask Mr. Mims to advise you of those
23 elements.

24 **MR. MIMS:** To prove the defendant guilty of the
25 charges set forth in Count 1, the government would have to

1 prove, first, that the defendant received in interstate
2 commerce a food, drug, device, et cetera, that was adulterated
3 or misbranded; and, second, that the defendant did so with the
4 intent to defraud or mislead.

5 **THE COURT:** Thank you.

6 Now, he's read you the penalties -- the elements. Do
7 you understand those elements?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** So, at this time, I'm going to advise you
10 of the penalties. It is a period of imprisonment of not more
11 than 3 years, not more than a \$250,000 fine, not more than
12 1 year on supervised release, and it does require you to pay a
13 \$100 special assessment. Do you understand?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** So I'm not sure if restitution will be
16 involved in this case or not until I get a presentence report,
17 but do you understand that the Court can order you to pay
18 restitution?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Do you understand that if you are ordered
21 to serve a term in prison that it will be followed by a term of
22 supervised release?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** And do you understand that if you are on
25 supervised release and you violate one or more conditions that

1 you can be revoked and returned to prison?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Doctor, do you understand the penalties?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** You signed a plea agreement, and I want
6 you to let your counsel show you the plea agreement itself.
7 And the document is dated October 14th, 2020. This is
8 essentially your contract with the government, and I want
9 Mr. Mims to read the substantive portions of this into the
10 record, please.

11 **MR. MIMS:** The defendant agrees to waive indictment
12 and plead guilty under oath to Count 1 of an information, which
13 charges a violation of Title 21, U.S. Code, Section 331(c).

14 The government agrees not to charge the defendant with
15 any other offenses arising from or related to this charge.

16 This agreement does not bind any prosecuting authority
17 of any state or any other federal district.

18 If the defendant violates this agreement, all
19 statements made pursuant hereto will be admissible against the
20 defendant.

21 And, finally, apart from being advised of the
22 applicability of the sentencing guidelines, and other than as
23 set forth elsewhere in the plea documents, no promise or
24 representation whatsoever has been made to the defendant as to
25 what punishment the Court might impose.

1 The defendant's agreement is knowing, free, and
2 voluntary. The defendant is pleading guilty because he is, in
3 fact, guilty.

4 **THE COURT:** Thank you, Mr. Mims.

5 Mr. Hollomon, I want you to show him the plea
6 agreement, and I failed to ask your client to affirm that that
7 is his signature.

8 **MR. HOLLOMON:** Your Honor, I have that before him now.

9 **THE COURT:** Is that your signature, sir?

10 **THE DEFENDANT:** Yes. Yes.

11 **THE COURT:** You also signed a plea supplement of the
12 same date. Is that your signature on the plea supplement?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** So the plea supplement is filed under
15 seal. I'm not going to ask that it be read aloud or into the
16 record, but there are some paragraphs, while you're looking at
17 the plea supplement, that I want to bring to your attention.

18 On the second page, Paragraph Number 5, and that
19 regards execution against property, moneys that may be involved
20 in this crime. Do you understand that paragraph?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** And then, too, I want to bring to your
23 attention next page, Paragraph Number 6. Now, Number 6 sets
24 out a recommendation from the government. It's what's referred
25 to as an 11(c)(1)(B). And you can read there.

1 What I want to make certain is that you understand
2 that if I do not accept the government's recommendation you are
3 still bound by your plea and you may not withdraw your plea of
4 guilty. Is that understood?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** So before you signed the plea agreement or
7 the plea supplement, did you have a conversation with
8 Mr. Hollomon regarding all of the content and the meaning of
9 those two agreements?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** Mr. Hollomon, did you have that
12 conversation with your client?

13 **MR. HOLLOMON:** I did, Your Honor.

14 **THE COURT:** And do you believe that he understands the
15 charge?

16 **MR. HOLLOMON:** I do.

17 **THE COURT:** Do you believe that he understood waiving
18 the indictment and proceeding in this fashion?

19 **MR. HOLLOMON:** I do, Your Honor.

20 **THE COURT:** And do you believe that he is entering
21 this plea freely, knowingly, and voluntarily?

22 **MR. HOLLOMON:** I do.

23 **THE COURT:** Dr. Sanford, in addition to the criminal
24 penalties that I've described to you, you will also lose your
25 right to vote, your right to hold public office, your right to

1 serve on a jury, and your right to own or possess a firearm.
2 Do you understand?

3 **THE DEFENDANT:** Yes, I do.

4 **THE COURT:** Have you and Mr. Hollomon had a
5 conversation about the potential guideline sentence that might
6 apply in your case?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** So, Doctor, if -- and that's just what it
9 is because I don't know yet. If I were not to accept the
10 recommendation of the government, then, obviously, this would
11 fall under sentencing guidelines. Sentencing guidelines are
12 advisory only. They're not mandatory, meaning that I could
13 impose a sentence that is more severe or less severe than
14 what's called for in the guidelines.

15 Do you have an understanding sufficient of how the
16 guidelines could affect your case?

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** So has anyone in this case -- other than
19 the government's recommendation, has anyone promised you what
20 the sentence is going to be?

21 **THE DEFENDANT:** No, ma'am.

22 **THE COURT:** And do you understand that under some
23 circumstances both you and the government can appeal any
24 sentence that is imposed by the Court?

25 **THE DEFENDANT:** Yes. Yes.

1 **THE COURT:** At this time, I want to ask Mr. Mims if he
2 will read into the record the factual basis for this case.
3 These are the facts that the government contends that had this
4 case gone to trial that they could have proved against you
5 beyond a reasonable doubt. It's very important that the facts
6 be accurate because sometimes the facts will affect the
7 guideline sentence.

8 So I want to ask Mr. Mims, if you would, please, read
9 these into the record.

10 **MR. MIMS:** Were the case to go to trial, the
11 government would expect to prove the following:

12 Ben Sanford is a physician who at all relevant times
13 operated Starkville Internal Medicine in Starkville,
14 Mississippi.

15 In August 2017, a parcel addressed to Dr. Sanford was
16 intercepted by an FDA Consumer Safety Officer and the
17 Department of Homeland Security at JFK International Airport in
18 New York. The parcel contained nine boxes of foreign,
19 unapproved Prolia. The seized Prolia was determined to have
20 been manufactured and shipped from overseas, likely originating
21 in Turkey.

22 A subsequent investigation revealed that, during the
23 time period set forth in the information, additional foreign
24 versions of prescription drugs, including versions of Prolia,
25 Boniva, Aclasta, and other drugs which had not been approved by

1 the FDA, had been shipped in interstate or foreign commerce and
2 received by Dr. Sanford at his clinic in Starkville. These
3 drugs were administered to patients of Starkville Internal
4 Medicine without their knowledge that the drugs were not FDA
5 approved but, rather, were foreign versions of the subject
6 drugs.

7 The government would further show that Starkville,
8 Oktibbeha County, lies within the Northern Judicial District of
9 Mississippi.

10 **THE COURT:** Thank you.

11 Did you understand everything Mr. Mims stated,
12 Dr. Sanford?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** And is everything he said about you and
15 your conduct true and correct?

16 **THE DEFENDANT:** We did receive the drugs. They were
17 ordered by my nurse, and, yes, they were foreign versions of
18 the same drug. Yes.

19 **THE COURT:** Yes, sir. Are you satisfied, Mr. Mims,
20 that that doesn't change any of the elements?

21 **MR. MIMS:** Yes, Your Honor. I don't believe that
22 changes anything, Your Honor.

23 **THE COURT:** And are you voluntarily entering this plea
24 of guilty on your own free will?

25 **THE DEFENDANT:** Yes.

1 **THE COURT:** Has anyone tried to threaten you, coerce
2 you, or promise you anything to force you to enter a plea of
3 guilty?

4 **THE DEFENDANT:** Well, I mean, the prosecutor presented
5 what the penalties could be, and that's what we considered,
6 yes.

7 **THE COURT:** So no one has threatened you?

8 **THE DEFENDANT:** No.

9 **THE COURT:** Okay. So have you understood all of the
10 questions I've asked you in this proceeding?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** Dr. Sanford, I'm about to ask you for your
13 actual plea, guilty, not guilty. Before I do so, do you need
14 to speak with your attorney about any matters on this record
15 before I ask you to enter your plea? Any questions?

16 **MR. HOLLOMON:** No, Your Honor.

17 **THE COURT:** Thank you.

18 In this cause number, do you plead guilty or not
19 guilty?

20 **THE DEFENDANT:** Guilty.

21 **THE COURT:** And that is to Count 1 of the information.

22 It is the finding of this Court in this case that the
23 defendant is fully competent and capable of entering an
24 informed plea; that the defendant is aware of the nature of the
25 charge and the consequences of the plea; and that the plea of

1 guilty is a knowing and voluntary plea supported by an
2 independent basis in fact containing each of the essential
3 elements of the offense.

4 Further, the Court's satisfied that the plea is not
5 a result of force, threats, or promises. Therefore, the plea
6 is accepted, and the defendant is now adjudicated guilty of
7 Count 1 of the information charge.

8 Mr. Hollomon, I'm assuming that your client wants to
9 make bond or continue on bond?

10 **MR. HOLLOMON:** Judge, he would ask the Court to permit
11 him to remain on bond.

12 **THE COURT:** Thank you. So --

13 **MR. MIMS:** Your Honor, if I may, technically, this is
14 his initial appearance, so no bond has been set.

15 **THE COURT:** No bond has been set. So I have a
16 recommendation of personal recognizance bond.

17 Okay. So I have bond papers that need to be
18 completed, Mr. Hollomon, and I also have some conditions. I'm
19 going to go briefly over those conditions with your client, and
20 then I'm also advised that you will need to meet -- he will
21 need to meet with the deputy marshals for some information that
22 they need as well.

23 **MR. HOLLOMON:** Yes, Your Honor.

24 **THE COURT:** So, Dr. Sanford, on your own personal
25 bond, the Court is going to release you. You must appear for

1 all court proceedings. If convicted, you must surrender to
2 serve a sentence that the Court may impose. This is a personal
3 bond.

4 I must ask you -- or tell you, too, that you shall not
5 violate any federal, state, or local laws while you're on
6 release. You must cooperate in the collection of DNA if
7 directed by your probation officer. You must advise the Court
8 or the pretrial services officer or supervising officer in
9 writing before making any changes to your address or phone
10 number. Always got to know where to find you. And you must
11 appear in court when -- when you're supposed to. Tentatively,
12 Mr. Hollomon, that is for his sentencing on May 4th, 2021, at
13 10:00 a.m. May 4th.

14 I will need him to sign these papers. And, in
15 addition, I need you to surrender your passport as directed.
16 That will come upon a conversation with probation and with the
17 deputy marshals, but I'm directing you to do it if you're
18 directed by one of them to surrender your passport, okay?

19 Any questions?

20 **MR. HOLLOMON:** No, Your Honor.

21 **THE COURT:** Okay. Any questions, Mr. Mims?

22 **MR. MIMS:** Your Honor, I would just ask that the
23 government be allowed to file the original information, plea
24 agreement, and plea supplement in this case.

25 **THE COURT:** Yes. And the Court accepts it, and it is

1 filed.

2 I'm going to hand back the paperwork. Don't need to
3 give him that one. And I'll need to sign that waiver. If
4 you'll hand it to me, I'll sign it now before he starts meeting
5 with others.

6 Does anybody have any other matters before we go off
7 the record?

8 **MR. MIMS:** No, Your Honor.

9 **MR. HOLLOMON:** From the defendant, Your Honor, my
10 client is prepared to pay the restitution that's been
11 calculated in this case. I just want to make the Court aware
12 of that. I suppose we would have to wait until May 4th to tend
13 to that or --

14 **THE COURT:** Yes. Yes. I'm totally unaware of any
15 restitution amounts at this stage.

16 **MR. HOLLOMON:** Yes, Your Honor. Yes.

17 **THE COURT:** So we've got to give the probation
18 officers a little time to work.

19 **MR. HOLLOMON:** Thank you, Your Honor. There's been a
20 preliminary figure arrived at working with the government, but
21 we'll be prepared to make that at the time of sentencing.

22 **THE COURT:** Okay. As one immediate lump sum payment?

23 **MR. HOLLOMON:** Yes, Your Honor.

24 **THE COURT:** Thank you.

25 Okay. Counselors, thank you.

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MR. HOLLomon: Thank you, Judge.
(CONCLUDED AT 11:35 A.M.)

CERTIFICATE

I, Phyllis K. McLarty, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of Mississippi, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing 22 pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Witness my hand, this 10th day of March, 2021.

/s/ Phyllis K. McLarty
PHYLLIS K. McLARTY, RMR, FCRR, CCR #1235
Federal Official Court Reporter